# VIRGINIA LAW REGISTER.

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*Issued Monthly at $5 per Annum. Single Numbers, 50 Cents.*

Communications with reference to CONTENTS should be addressed to the EDITOR at University Station, Charlottesville, Va.; BUSINESS communications to the PUBLISHERS.

IN the recent case of *Burt* v. *Union Central Life Insurance Co.*, 23 Sup. Ct. 139, the rather novel question was presented as to whether, under a life policy, of which the estate of the insured was the beneficiary, a recovery may be had where the insured was capitally executed under a conviction of murder, and there was no clause in the policy invalidating it for that cause. It was held that no recovery could be had.

In the same case the plaintiffs offered evidence to prove that the conviction of murder was wrongful and not justified by the testimony—basing their right to contradict the judgment of conviction on the ground that the judgment was not conclusive as to them, since they were not parties to the criminal prosecution. The court held, however, that although not barred of any right by the principle of *res judicata,* it was contrary to public policy to permit insurance against a miscarriage of justice, which would be sanctioned by permitting the impeachment of the judgment of conviction.

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A CONTRADICTION of the proverb that "what is sauce for the goose is sauce for the gander," is presented in the recent case of *Hartford Fire Ins. Co.* v. *Wilson,* 23 Sup. Ct. 189.

The court held a few months ago, in *Northern Assurance Co.* v. *Grandview etc. Assoc.* 183 U. S. 308 (contrary to the view prevailing in the majority of the State courts) that the familiar clause in fire policies prohibiting proof of stipulations, conditions or waivers of any kind unless indorsed in writing on the policy, must, if brought home to the insured, be complied with, and that no oral stipulation contrary to the terms of the policy could be set up by the assured. In the principal case, the situation was reversed. Here the insurance company undertook to show that a policy complete on its face, and delivered to the insured, was in fact delivered on an oral condition not fulfilled. The insured relied on the former

ruling in *Northern Assurance etc. Co.* v. *Grandview etc. Assoc.*, and maintained that proof of the oral unindorsed condition should be excluded. The lower court excluded the proof accordingly, holding that while it is well settled that written contracts (including insurance policies—see *Catt* v. *Oliver*, 6 VIRGINIA LAW REGISTER, 465 and note), are subject to oral proof of conditional delivery, yet in this case such proof was excluded by the express language of the policy, as construed in the former case.

But this view was overruled on appeal, and it was held that the terms of the policy did not exclude, and were not meant to exclude, oral proof of conditions, the performance of which was precedent to the existence of the contract; that the provisions of the policy on this subject were meant to become operative only in case the policy itself became operative as an executed contract; and hence such provisions did not exclude parol evidence to establish the fact that no complete contract ever existed between the parties.

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THE famous "Syrup of Figs" case, to which allusion has heretofore been made, has at last reached a final decision in the Supreme Court of the United States. *Clinton E. Worden & Company* v. *California Fig Syrup Co.*, 23 Sup. Ct. 161.

In the original effort by the Fig Syrup Company to protect itself against infringements, it laid claim to the term "Fig Syrup," or "Syrup of Figs," as a trade mark. The defense met this by the contention, obviously sound, that the words were descriptive and could not be exclusively appropriated as a trade mark. In response, the plaintiff let the cat completely out of the bag, by replying that while the terms seemed to be descriptive, they were not so in fact, since the essential ingredients of the preparation were senna leaves and sugar, and that there was little or no fig syrup in it! Fatal admission! "If that be true," rejoined the defense, "then deceit is being practised on the public, and you are asking a court of equity to assist you in enjoying a monopoly in the fraud. You have not come in with clean hands." "Right you are," said the court, and the plaintiff went thereof without day, with a decree against it for the defendants' costs about their suit in that behalf expended.

After suffering several similar reverses in the lower Federal courts, with affirmances in the Circuit Court of Appeals, the plaintiff company finally succeeded in convincing the Federal court in

its home State of California that it was entitled to continue to practise the fraud as a monopoly, and, curiously enough, secured an affirmance of this decree in the Circuit Court of Appeals of that circuit. But it is a far cry from California to Washington, and but one Californian is on the bench of the Supreme Court. Seven of the learned justices concurred in the opinion of Mr. Justice Shiras, reversing the findings of the Circuit Court of Appeals, and remanding the case with directions to dismiss the bill—the court agreeing with the conclusion reached by the other Federal courts, that the use of the name "Syrup of Figs" in connection with a preparation which had no fig syrup in it, was a fraud on the public, toward the continued perpetration of which a court of equity would not lend its aid. Mr. Justice McKenna (of California) dissented.

The California Fig Syrup Company may at least take comfort from the circumstance that its home judges were faithful to the end.

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SINCE Mr. Bryan's article on the subject of attachments against national banks, published *ante* p. 327, the Court of Appeals of New York [in *Reed* v. *Peoples Nat. Bank* (Jan. 20, 1903), 28 N. Y. L. J. 1639] has again given full consideration to the question as applicable to *solvent* national banks, and again denies the right of attachment, whether the bank be solvent or insolvent—following its previous ruling in *Bank of Montreal* v. *Fidelity Nat. Bank,* 112 N. Y. 667, which, in turn, was based on the authority of *Pacific Nat. Bank* v. *Mixter,* 124 U. S. 721. Besides these, the following additional cases are cited as supporting the decision: *Freeman Mfg. Co.* v. *Nat. Bank of the Republic,* 160 Mass. 398; *Planters' Loan & Sav. Bank* v. *Berry,* 91 Ga. 264; *First Nat. Bank of Kasson* v. *La Due,* 39 Minn. 415; *Dennis* v. *First Nat. Bank of Seattle,* 127 Cal. 453; *Stafford* v. *First Nat. Bank of Plattsburg,* 61 Vt. 373; *Rosenhein Real Estate Co.* v. *Southern Nat. Bank,* 46 S. W. (Tenn.) 1026; *Garner* v. *Second Nat. Bank of Providence,* 66 Fed. 369.

The point was made in the principal case, that the provisions of Rev. Stat. sec. 5242, prohibiting attachments against national banks, had been qualified by the Act of Congress of July 12, 1882 (22 U. S. Stat. at Large, ch. 290), sec. 4 of which provides that the rights and privileges, as well as the duties and liabilities, of any

banking association extending the period of its succession in accordance with the act, are preserved, with this proviso: "That the jurisdiction for suits hereafter brought by or against any association established under any law providing for national banking associations, except suits between them and the United States, or its officers and agents, shall be the same as, and not other than, the jurisdiction for suits by or against banks not organized under any law of the United States, which do or might do banking business where such national banking associations may be doing business when such suits may be begun. And all laws and parts of laws of the United States inconsistent with this proviso be, and the same are hereby, repealed."

It was argued that if the defendant had been a foreign state bank, with funds in New York, the courts of that State might have acquired jurisdiction by an attachment, and hence that the same jurisdiction existed over the funds of a foreign national bank. The court declined to adopt this view, however, since it is manifestly violative of the spirit of all the legislation on the subject, when read as a whole. "We agree," said the court, "with the Appellate Division, that 'the Act of 1882 was intended to prescribe the forum for litigations by and against national banks, and does not relate to provisional remedies to be had in such actions. It was designed to prescribe the place where and the courts in which such actions may be prosecuted, but it was not intended to regulate the procedure in such actions when brought'." "Nor, we might add," continued the court, "was it intended to so regulate the method of commencing an action as to enable a State court to acquire jurisdiction over the property of a national bank without acquiring jurisdiction of the bank itself."

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THE rights of members of a communistic society were recently the subject of consideration by the Supreme Court of the United States in the case of *Schwartz* v. *Duss,* decided October 27, 1902. The questions raised were entirely aside from the beaten paths of the law in point of novelty and interest. The society in question was the famous Harmony Society of Economy, Pennsylvania, founded about 1804 by one George Rapp, who, with his son and others, came from the kingdom of Wurtemburg to the United States. Its members were associated by the common belief that "the government of the patriarchal age, united to the community

of property adopted in the days of the apostles, would conduce to promote their temporal and eternal happiness." The cardinal principle of the society was self-abnegation. A formal contract modified in later years in accordance with the changed conditions and desires of the members, was entered into among themselves, by which each subscriber thereto delivered up, renounced and remitted for himself, his heirs and descendants all of his or her property of every kind "as a free gift or donation for the benefit and use of the community." They further pledged obedience and submission to the society and agreed never to demand any reward for labor or services, which they declared should be "a voluntary service for our bretheren." In consideration of this renunciation and dedication, Rapp and his associates promised to supply the subscriber with all the necessaries of life, in health or sickness, youth or old age, and to provide for the subscriber's family after his death. A provision in the first contract for the refunding to withdrawing members of the value of the property brought in by them was stricken out in 1836, and another adopted by which all agreed to part finally and irrevocably with their contributions; that withdrawing members or the heirs of deceased members shall be entitled to claim nothing from the society as a matter of right, though the superintendent might, in his discretion, make what allowance he should choose as a donation.

This agreement was pronounced by the Supreme Court of Pennsylvania to be unobjectionable in law, policy or morals (*Schriber* v. *Rapp,* 5 Watts, 351, 30 Am. Dec. 327), and its validity was not questioned by the Federal Supreme Court in *Baker* v. *Nachtrieb,* 19 How. 126, and other cases. In the course of years, owing to the wise management of its officers and the industry and exemplary conduct of the members, the property of the society increased enormously in value, but one by one the members died, until at the time of the suit, they were only eight in number, six of them women, aged or ignorant. Practically Duss was the last survivor, and as such claimed the ownership of the entire estate.

Schwartz and Koterba, as children of parties to the original agreement, filed their bill in equity, alleging that if the property had ever been imprssed with a trust (which they denied), such trust had wholly ceased and the assets of the association (which they further alleged had been further dissolved by its merger with a corporation entirely foreign in nature to the spirit of the original

and amended agreements) reverted to the donors thereof, whose rights survived to their children.

The Supreme Court overruled this contention, and held that the adoption of the plan was not the creation by the members of a trust in the property for the benefit of the society, as such, which, on the doctrine of resulting trusts, conferred on the descendants of members who had contributed no property, but only labor and services, any such proprietary right or trust as to entitle them to share in its property or have an accounting.

Mr. Justice Gray and Mr. Justice Shiras took no part in the decision. Mr. Chief Justice Fuller, with whom concurred Mr. Justice Brewer, dissented, in an opinion the spirit of which is contained in the following extracts:

"It is inconceivable that the creators of the trust contemplated any such result, when they sought to perpetuate Christian fellowship by the renunciation of their property." "The titles held by the trustees in this case were held for the benefit and use of the society in the maintenance of its principles. When the purposes of the trust failed the property reverted, not because of special provision to that effect, but because that was the result of the termination of the trusts."

The judgment in the case is certainly encouraging to members of clubs and social and fraternal organizations to admit no new members, but simply "persevere."